

Appl. No. 09/829,168
Docket No. P116RC
Amdt. dated September 10, 2007
Reply to Office Action mailed on March 29, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1 and 3 – 9 and 11 – 12 are pending in the present application. Claim 1 has been amended to include the elements of currently canceled claim 10. Claims 2 and 13 – 36 were previously canceled. Claims 1, 3 – 6 and 9 – 12 are currently rejected. Claims 7 and 8 are objected to and would be allowable if re-written in independent form.

Rejection Under 35 U.S.C. § 103(a) Over Meyer in view of Fujimori

Claims 1, 3 – 5 and 9 – 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Meyer (EP 0,259,713) in view of Fujimori (US Patent No. 5,294,458). Applicant respectfully traverse this rejection.

The Office Action asserts that Meyer teaches feeding dogs an artificially produced milk substitute and that Fujimori discloses that fructooligosaccharides are known to be in pet foods to reduce objectionable odors in pet waste. Meyer does not teach or suggest addition of sugars or saccharides at all, and in particular, actually teaches that removing sugar from milk substitute can be beneficial or necessary, i.e., Meyer removes lactose, citing excess lactose as a problem for milk substitutes, particularly canine milk substitutes. Therefore, Meyer does not provide any expectation of success in adding saccharides at all to milk substitutes, nor provide any predictability that would lead one of skill in the art to add saccharides to milk substitutes. In addition, therefore, Meyer does not provide any motivation that would lead one of skill in the art to a suitable amount of fructooligosaccharides.

Fujimori discloses only that there is a general desire to reduce objectionable odors in pet waste, and that various kinds of oligosaccharides are known. However, Fujimori specifically indicates at column 1, lines 58 – 63 that the invention therein comprises lactosucrose having distinctive characteristics superior to fructooligosaccharide in metabolizing of intestinal flora. Therefore, Fujimori does not provide any expectation of success for adding a fructooligosaccharide to a milk substitute for canines, and certainly provides no indication of what a suitable amount of such a fructooligosaccharide might be.

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Thus there is no reasonable expectation of predictability found in the cited documents, either alone or in combination, that would have led one of skill in the art to add a fructooligosaccharide, or any particular amount thereof, to a milk substitute. Meyere removes sugars and Fujimori teaches that fructooligosaccharides are not particularly effective at reducing waste odor.

In addition, as best understood by Applicant based on the disclosure in Meyer (page 2, second paragraph under Description, and page 3, lines 12 – 16), that lactose content can contribute to perhaps life-threatening diarrhea, particularly in whelps, adding a sugar, lactosucrose, as disclosed by Fujimori, to a canine milk substitute, may actually be harmful to canines. Therefore, there is no reason found in the cited documents that fructooligosaccharide would be added at all, or would even be considered for adding, to a liquid milk substitute for canines.

Applicant respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Meyer in view of Fujimori and further in view of Gil

Claim 6 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Meyer in view of Fujimori and further in view of Gil (US Patent No. 5,709,888). Applicant respectfully traverses this rejection.

The Office Action asserts that Meyer discloses feeding dogs an artificially produced canine milk substitute and that Gil teaches that a preferred source of fat for a human milk replacer includes an oil such as corn oil. The Office Action also asserts that Gil experimentally teaches feeding weanling rats, and discloses using arachidonic acid and docosahexaenoic acid. Therefore, the Office Action asserts that it would have been obvious to use corn oil, arachidonic acid or docosahexaenoic acid as a fat source in the instantly claimed canine milk replacer to obtain the beneficial effects found in humans and rats.

As noted above, neither Meyer nor Fujimori, either alone or in combination, provide the requisite expectation or predictability to one of skill in the art to have arrived

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at the present composition. Furthermore, as noted in Meyer, there are digestive differences between animals. Meyer notes that most milk substitutes for dog whelps are commonly initially formed from cow's milk powder which is high in lactose, but not particularly high in protein. Page 2, second paragraph of the description. Meyer also discusses that it is known that such milks can give the dogs life threatening diarrhea while at the same time not providing appropriate nutrients/protein for puppies. Id. Therefore, because it is known that different types of milks, having different carbohydrate, protein and fat compositions are not necessarily appropriate across species, Gil, in providing a particular fat mixture for use in human milk replacement does not provide any expectation or predictability that the fat mixture disclosed therein, for use on humans, with limited testing in rats, would be at all useful or appropriate to include in a canine milk substitute.

Applicant respectfully requests reconsideration and withdrawal of the rejection.

Rejection on the grounds of *res judicata*

Claims 1, 3 – 6, and 9 – 12 are rejected on the ground of *res judicata* over a determination by the Board of Appeals in Appeal No. 2005-1949. Applicant respectfully traverses this rejection.

Claim 1 was amended with the filing of a Request for Continued Examination on November 30, 2006. Therefore, claim 1, as filed in the RCE was not the same as the previous claim 1, the rejection of which was affirmed by the Board of Appeals. Thus, claim 1, as amended, has not been previously adjudicated. Claims 3 – 6 and 9 – 12 depend from claim 1. Applicant respectfully requests reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In

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view of the foregoing, entry of the amendments presented herein, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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